SHARON MILLER GROMEK,

Plaintiff/Respondent

vs.

VITOLD F. GROMEK

Defendant/Appellant pro se

Nov. 6, 2023

SUPERIOR COURT OF NEW JERSEY,

APPELLATE DIVISION,

DOCKET NO. A-003181-22

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION – FAMILY PART

MORRIS COUNTY

DOCKET NO. FM 14 – 6 - 10

Sat Below

HON. CLAUDIA JONES, J.S.C.

APPELLANT'S BRIEF, REVISED

In Re

Order Dated May 12, 2023

Order dated March 30, 2023

SHARON MILLER GROMEK,	**SUPERIOR COURT OF NJ**
plaintiff/respondent	**APPELLATE DIVISION,**
vs.	**DOCKET NO. A-003181-22**
VITOLD F. GROMEK	**CIVIL ACTION**
defendant/appellant pro se	ON APPEAL FROM:
	SUPERIOR COURT OF NJ
	CHANCERY DIVISION –
	FAMILY PART
	MORRIS COUNTY
	DOCKET NO. FM 14–6-10
	Sat Below
	HON. Claudia Jones, J.S.C.

TABLE OF CONTENTS

Appendices:

Sharon Miller Gromek, **Plaintiff/Respondent**	**Superior Court of NJ**
	Appellate Division.
v.	**Civil Action**
Vitold F. Gromek,	**Docket A-003181-22**
Defendant/Appellant Pro Se	**Superior Court,** **Family Divison**
	Morris County, **Docket No. FM 14-6-10**

Table of Appendices

Transcripts

Volume I: Exhibits

Volume II: Exhibits

Volume III: Exhibits

Sharon Miller Gromek, **Plaintiff/Respondent**	**Superior Court of NJ** **Appellate Division.**
v.	Civil Action
Vitold F. Gromek,	Docket A-003181-22
Defendant/Appellant Pro Se	Superior Court, Family Division
	Morris County, Docket No. FM 14–6-10

TABLE OF AUTHORITIES

I. Case Law

II. Rules of Court

Sharon Miller Gromek,
Plaintiff/Respondent

v.

Vitold F. Gromek,
Defendant/Appellant Pro Se

Superior Court of NJ
Appellate Division.

Civil Action

Docket No.A-003181-22
Superior Court,
Family Division,
Morris County,
Docket No.FM 14–6-10

TABLE OF JUDGMENTS, ORDERS & RULINGS

Orders being appealed:

Relevant Orders:

APPEAL BRIEF

Sharon Miller Gromek v. Vitold F. Gromek

Docket No. 003181-22

PROCEDURAL HISTORY

1. The FJOD (Da32 - excerpts) was issued 7/16/1999, revised 9/8/1999, Nunc Pro Tunc to 7/16/1999.

2. The FJOD was appealed, docket No. A-6302-99T1. An Appellate Remand Order was issued on Jan. 17, 2002 (Da95). Interlocutory orders were issued by the trial court to correct FJOD errors (Orders of 3/7/2001, 9/24/2001, 9/12/2002) and a final corrective Order was issued by the trial court on March 25, 2004 (Da41).

4. The Court's support Order of Feb. 6, 2012 (Da50) provided Appellant credits in the amount of $12,390 – which were never posted on Probation's account record.

5. The Court issued two Orders requiring Probation to hold a hearing to correct Probation's account record on 6/28/2012 and 7/20/2012 (DA52). Probation refused to comply with the Orders and the court declined to enforce its own Orders.

6. The trial court issued its Order dated 12/10/2014 pursuant to Appellant's Motion of 9/21/2009 (DA58).

7. Respondent filed a Motion for Enforcement of the 12/10/2014 Order. Oral argument heard on Oct. 23, 2015 (**Transcript T1**) The Order of Oct. 27, 2015 was issued (Da60).

8. Appellant filed a Notice of Appeal of the Order of 10/27/2015. Appellant's appeal A – 1494 – 15T1 was denied by way of Appellant order of 6/5/2018 (Da131).

9. A Consent Order of 6/26/2019 was issued requiring Appellant to make monthly payments of $1,700.00 toward awards granted Respondent by the Order of 12/10/2014 until re-financing of Appellant's home allowed payment in full of awards granted by the Order of 12/10/2014 by 7/31/2020.

10. Appellant filed a Motion for Extension of Time on 6/30/2022 (DA203) to complete re-financing of his house. Oral argument was heard 8/7/2020 (**Transcript T2**). An Order dated 8/16/2020 was issued and Appellant appealed the Order.

11. Appellant filed a Motion for Retirement, Termination of Alimony, and Request for plenary hearing to correct Probation account. The Court issued its Order of 11/4/2020 and Appellant appealed the Order in consolidation with the Order of 8/16/2020, docket no. A-00251-20. The Appellate Court issued its decision of 6/15/2023 (DA142). Request for plenary hearing denied; remand order issued for consideration of all factors for award of counsel fees pursuant to 5:3-5.

12. Appellant filed an OTSC to Stay the Order of 8/16/2020 and requested the Court expedite his current motions so that the looming deadline for refinancing of his home could be met. The OTSC was heard on 9/21/2020 (**Transcript T3**). Denial issued by way of Order dated 9/21/2020 (Da69).

13. Appellant filed a Motion for Termination of Child Support due to overpayment of support as per Probation's own published records. The Order of 10/25/2021 granted Appellant's request for termination of child support, and required a "full accounting" of the support account record.

14. Appellant filed a Motion for the Enforcement of the Order of 10/25/2021. The Order of 1/11/2022 (DA76) extended the deadline for Probation to comply for a "full accounting for the period 10/1/1998 to the present, and to identify any credits due Appellant, citing a previous trial court's Order of 7/20/2012 (see item no. 5 above).

15. After months of delay, Probation submitted its 3rd attempt at a "full accounting" on 3/22/2022. The Order of 4/4/2022 (DA80) deemed it complete.

16. Appellant filed a Motion for Reconsideration on 4/22/2022. The Court denied the Motion without prejudice in its Order of 5/27/2022 (DA90), but due to Court dysfunction, the Court did not provide Appellant with the Order until Jan. 25, 2023.

17. Appellant filed a Notice of Appeal of the Order of 5/27/2022 with a Motion to File Within Time on 2/28/2022. The Motion was denied on 3/30/2023.

18. Unaware of the Order of 5/27/2022, Appellant filed a Motion for Correction of Probation Account Errors and requested consolidation of his current Motion for Reconsideration and requested consolidation with his previous Motion for Reconsideration of the Order of 4/4/2022 (DA469). The Order of 3/30/2023 (DA20) denied the Motion.

19. Appellant filed a Motion for Reconsideration of the Order of 3/30/2023. The Court issued a denial on 5/12/2023 (DA14). Appellant filed a Notice of Appeal, and subsequently an amended Notice of Appeal (DA1) of the Order of 5/12/2023 and the underlying Order of 3/30/2023

PRELIMINARY STATEMENT

Appellant appealed the Orders of 8/16/2020 and 11/4/2020, docket no. A-00261-20. Subsequent to 11/4/2020, Appellant filed further motions pursuant to Probation's continued wrongful posting of erroneous support charges on the support account record. Ms. Koval, case manager, reviewed Appellant's history of motions and court orders and advised that events, filings or Orders occurring subsequent to the Order of 11/4/2020 could not be discussed or disclosed under the Appeal. At oral argument held on May 30, 2023, upon inquiry by appellate jurists as to whether a customary "accounting" of Probation's account record had been provided in lieu of holding a court hearing, Appellant advised of Ms. Koval's warning to avoiding mention of subsequent case events, but noted that an erroneous "accounting" (DA162) was issued by Probation. The Appellate decision of 6/15/2023, no. 00261-20 (DA142) was granted in part and denied in part. Request for a plenary hearing to correct the account record was denied.

However, Probation continued its wrongful conduct after 11/4/2020, i.e. issuance of erroneous account statements, its over-garnishment of support, its failure to accurately track and post alimony payments versus child support payments on the account record, and even re-institution of garnishment of Appellant's social security benefits in violation of the Orders of 10/25/2021, 1/11/2022 (DA76), and 4/4/2023 (DA80) by way of an erroneous NJ support account number not Appellant's.

With Probation's submission of an "accounting" on 3/17/2022 (DA162), Probation acknowledged for the first time that it had no basis for substantial support arrearage charges (posted for 23 years) and credits denied (for 18 years) and Probation withdrew its erroneous account postings without acknowledging its responsibility for the errors. Thus, Probation's 23 year-long history of misconduct and mismanagement of Appellant's account record was exposed and Appellant's 23-year long claims of account error were vindicated.

However, Probation's "accounting" of 3/17/2022 remains incomplete despite the trial Court's determination of 4/4/2023, and improper charges, ignored court orders, and inadequate credits remain on the account record. This Appeal, docket no. 003181-22, requests Appellate review of trial court error and abuse of judicial discretion in overlooking, failing to consider, or by outright mistake failing to address Probation's continued wrongful misconduct (including fabrication of false support arrearage charges) and mismanagement of the account record, its repeated

failure to accurately comply with court orders from "day one," i.e., Oct. 1, 1998, and correction of account errors not previously submitted to the Court for adjudication. In light of the exposure of Probation's decades-long misconduct, conflicts between the Appellant Remand Order of 1/17/2002 and the Appellate Orders of 6/5/2018 and 6/15/2023 need be reconsidered by the Appellate Court.

Appellant further requests that he be finally permitted his "day in court" by way of a Remand Order for a hearing to adjudicate and resolve the full extent of Probation's blatant account errors and misconduct. In the alternative, given Probation's demonstrated inability to correct its account record and the trial court's failure to ensure an accurate account record, Appellant requests the Appellate Court assume jurisdiction of this case.

STATEMENT OF FACTS

1. The Court's decision of 2/6/2012 (DA50-51) stated:

> "Judge Bartlett calculated a credit due Appellant of $6,160 as of 10/1/09. "I have determined that as if 10/1/09 Defendant was entitled to a credit of $12,390."..."He has therefore overpaid by $12,390.00. This should be reflected as a credit on his probation account."

The credits were never posted on Probation's audits (see audit of 8/21/2012 (DA286, DA290, DA294, DA299, and DA304). The trial Court never corrected Probation's erroneous audits.

2. The Order of 6/28/2012 (DA52) required Probation to "hold a hearing to resolve all discrepancies"; its Order of 7/20/2012 (DA51) ordered Probation to:

> "conduct an audit for the period commencing Oct. 1, 1998 "..."This audit shall be conducted by way of a hearing that shall be on the record" and "Probation Department shall retain a copy of all documents provided by the Defendant in connection with the hearing/audit..."

However, Probation refused to comply with either of the court's Orders, refused to consider Appellant's evidence of payments in full for the period 10/2/1998 through 9/8/1999, and the Court declined to enforce its own Orders against Probation claiming it "didn't know if it had the authority to order Probation." The Orders have not been vacated, remain in effect, and still have not been enforced by the Court.

3. Appellant's letter to the Court dated 4/19/2021 (DA309) cited continued over-garnishment of his income in excess of Probation's claimed child support arrearages (see Probation's audit, 9/18/2020, DA304). Appellant filed a Motion for Termination of Garnishment of Child Support and submitted an analysis demonstrating over-garnishment by $2,987.54 (DA311) based on Probation's audit of 9/18/2020 (DA304). The Order of 10/25/2021 determined child support was paid in full and garnishment was ordered terminated, but a credit of only $763.04 was granted to Appellant. As a result, the Court also granted Appellant's request requiring Probation submit a "full accounting of child support and alimony arrears and records previously paid." To this day, Probation has never explained how it calculated only $673.04 for over-garnishment of Appellant's income.

4. Probation failed to produce the required "full accounting" and a Motion for Enforcement of the Order of 10/25/2021 was filed. The Order of 1/11/2022 (DA76) required Probation to produce a "full accounting commencing from Oct. 1, 1998 to the present," and required credits be provided Appellant for "any overpayments or improper garnishments." Appellant's other requests were denied without prejudice.

5. However, Probation's over-garnishment of Appellant's income and SSA benefits continued. The SSA issued a Notice of Termination of garnishment dated 12/8/2021 (DA312). Probation issued erroneous notices dated 1/23/2022 (DA321) and 1/31/2022 (DA323) which resulted in the re-institution of garnishment of Appellant's SSA benefits in violation of the Orders of 10/25/2021 and 1/11/2022. The SSA subsequently issued conflicting notices of garnishment utilizing two different child support accounts, one of which garnished under a false NJ child support account number (CS32040355B) not belonging to Appellant (see DA313-318). Improper SSA garnishment totaled $11,917.40 (DA319). An additional $996.00 of Appellant's wages were improperly garnished, for a total sum of $12,913.40. Probation provided reimbursement of only $4,843.90 (DA320-326). The Court did not address the improper garnishment or the violation of its Orders.

6. Appellant filed a Motion for Discovery requesting documentation as to SSA's reinstitution of garnishment under an erroneous child support account number, denied by Order dated 4/29/2022.

7. While awaiting adjudication of his Motions, Appellant issued a number of letters to both Probation and the Court citing Probation's improper garnishment in violation of court Orders. In his letter to the Court of 2/7/2022 (DA445) Appellant cited Probation's improper re-institution of SSA garnishment (DA446). Appellant's letter of 5/7/2022 (DA450) to Probation cited improper garnishment of SSA benefits in violation of the Court's Order of 4/4/2022. Appellant's letter of 5/11/2022 (DA453) cited over $6,000 of continued improper garnishment of SSA benefits and violation of the Order of 4/4/2022. Appellant's letter of 6/2/2022 (DA456) cited numerous Probation account errors and the failure of Probation's 3/17/2022 "accounting" to acknowledge $54,500 in payments made by Appellant in 1998-1999. Appellant's letters of 6/6/2022 (DA459), 6/13/2022 (DA462), 6/27/2022 (DA465) and 7/21/2022 (DA468) likewise cite continued improper garnishment of income and SSA benefits in violation of the Order of 4/4/2022 under an erroneous NJ support account number which was not Appellant's. No response was received from Probation or the Court.

8. Given Probation failure to produce a court-ordered "full accounting" and Probation's improper garnishment of SSA benefits, Appellant filed a Motion for Enforcement of the Order of 1/11/2022.

9. Probation finally submitted its "accounting" on 3/17/2022 (DA162) wherein it withdrew its 23-year old fabricated and false claim of $16,000 in support arrearage

as of 2/1999 (see Audits DA286, DA290, DA294, DA299 and DA304 for improperly charged $16,000 support arrearage as of 2/1999) and finally acknowledged an 18 year-old court-ordered credit of $10,354.73 (see Order of 3/25/2004, DA41), but failed to account for $54,500 in payments (see DA456 and John Hartmann's letter to Court of 10/8/1999, DA414) made by Appellant commencing Oct. 1, 1998, failed to acknowledge Appellant's actual overpayment and the resulting ordered credit of $4,753 (see FJOD, item no. 19, DA38, and the Order of 3/25/04, DA45), and the ordered elimination of $16,519.20 in arrearages (DA41), in addition to other errors in the "accounting."

10. Other errors in the "accounting" became blatantly obvious, demonstrating Probation's mis-management of the account record. For example, Probation failed to track allocation of alimony versus child support payments. The Audit of 9/18/2020 (DA304) improperly indicated an overpayment of alimony of $41,278.42 but an arrearage of $21,548.50 on child support – violating child support regulations requiring allocation of funds first toward child support. Again, as Ms. Laurie Newmark, Esq., stated, "no one did the analysis." (2T11, 8-10). Probation's "accounting" of 3/17/2022 failed to address the improper re-institution of garnishment of SSA benefits or the use of a false NJ child support account.

11. Despite these errors in Probation's 3/17/2022 "accounting," the Court determined the "accounting" complete (see Order of 4/4/2022, DA80). The Order

also terminated SSA garnishment as of 2/7/2022 (but Probation and the SSA continued improper garnishment – see paragraph no. 7 above), and alimony was to continue at $498/week (also violated by Probation – as noted above). However, the Court failed to investigate the discrepancies between evident errors in the account record and the 3/17/2022 "accounting." Appellant's request for a court hearing was denied without prejudice, the Court stating *"The Court notes the Defendant always has the right to file a new motion if he uncovers any discrepancies. Accordingly, the Court* ***DENIES*** *the Defendant's request for the Court to preliminarily Order a hearing if discrepancies remain."*

12. Appellant filed a Motion for Reconsideration of the Order of 4/4/2022, which was denied on 5/27/2022 but not provided to Appellant until on or about 1/25/2023.[1] Having not received the Court's Order in response to his Motion, and in response to Judge Pawar's concern regarding ordering a hearing "if discrepancies remain," his recognition of opportunity to file a new motion for "additional discrepancies," and

[1] Due to extraordinary and unfathomable Court dysfunction, Appellant was not advised of the Court's Order of 5/27/2022 (DA90) until on or about Jan. 25, 2023, despite numerous emails (including emails to Judge Pawar's law clerk prior to issuance of the Order of 5/27/2022), phone calls, and letters to the Court. Unbeknownst to Appellant, this case had been transferred to Judge Claudia Jones reportedly on or about the beginning of May, 2022 and no follow-up was made by court staff, either Judge Pawar's staff or Judge Jones' staff, to respond to Appellant's numerous emails, calls and letters (DA 439 – DA470) requesting adjudication of my Motion for Reconsideration of the Order of 4/4/2022. Indeed, in an inexplicable demonstration of court dysfunction, Appellant was even given the wrong telephone number to Judge Pawar's law clerk by the staff at the Resource Center, thus delaying Appellant's receipt of the Court's Order of 5/27/2023 for eight months. Appellant's request for deferral of date of publishing of the Order to 1/25/2023, the date of receipt, which had been previously granted by Judge Amirata under similar delay engendered by Court dysfunction, was denied.

his Order of denial without prejudice, Appellant filed a Motion for Correction of Probation Account Errors on 10/27/2022 and requested consolidation with his Motion for Reconsideration of the Order of 4/4/2022 by way of cover letter to the Court of 10/24/2022 (DA469). Appellant's Motion also cited errors not previously litigated on page 2 of Appellant's certification, DA342):

> *I respectfully submit this Motion for correction of* ***yet further palpably evident discrepancies found in Probation's account record, its audits, and its "accounting" of 3/17/2022 which have resulted in continued, egregious, unjust over-garnishment of my income and social security benefits***." (Bold/underlining added).

Appellant's Motion was denied by Order dated 3/30/2023 (DA20). The Court failed to address Probation's improper continued garnishment of Appellant's SSA benefits under erroneous child support account number and its failure to fully refund over-garnished funds. Probation failed to respond with specificity to Appellant's identification of numerous specific errors cited in Probation's "accounting." The Court failed to hold a hearing to resolve the disputed facts.

13. Appellant filed a Motion for Reconsideration of the Order of 3/30/2023, denied on 5/12/2023 (DA14). Again, both Probation and the Court failed to respond with specificity to Appellant's identified newly listed account record deficiencies.

14. Appellant filed a Notice of Appeal (DA1) of the Orders of 5/12/2023 and the underlying Order of 3/30.2023.

POINT I: The Court erred and abused its judicial discretion in failing to enforce the order of 1) 7/20/2012 (DA53) to hold a hearing, on the record, and 2) the Order of 1/11/2022(DA76) to provide Defendant a complete "full accounting" and to provide "a credit for <u>any overpayments or improper garnishments</u>" from the period commencing from October 1, 1998 to the present date." Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. In its decisions of 3/30/2023 (DA20) and 5/12/2023 (DA14), the Court unfortunately made a number of material errors in its citation of procedural history, Statement of Reasons and its findings by way of omission, overlook, failure to consider probative substantive evidence, or material misstatement of the facts of the case. As my former attorney, Ms. Laurie Newmark, repeatedly stated in oral argument before the Court, this case has a history wherein "***<u>no one did the analysis</u>***" (2T11, 8-10) at the trial court level, and Probation account errors started "day one" of this case, i.e., Oct. 1, 1998, and were compounded by subsequent errors for 23 years, leading to an egregiously inaccurate support account record and erroneous Probation account audits – which remain to this day.

2. First, the Court in its Order of 3/30/2023 repeats an erroneous finding in its Statement of Reasons on page 9 that

> "... Probation submitted all available accounting of the Defendant's probation account and indicated to the court that Probation had to confer with the Defendant regarding payments made before Oct. 1, 2000."

As pointed out in Appellant's brief pursuant to his Motion for Reconsideration of the Order of 4/4/2022 (paragraph no. 22) the Court's statement is:

> "...simply not true. It appears that the Court misread Ms. Barris's letter of 2/18/2022 (**Exhibit W**) wherein she discussed conferring with her client, Probation, and not Defendant. For the record, **no effort whatsoever was made by Probation to confer with me**, I received no email, phone call or letter whatsoever from Probation requesting a conference, and to the contrary, all efforts by me and my attorney over 23 years to do so have been rebuffed unreasonably by Probation[2]. Indeed, I would have welcomed a good-faith conference with Probation so the errors could easily be corrected. Thus, **the Court's finding is based upon an erroneous reading contrary to fact and requires reconsideration**." (emphasis added)

The Court unfathomably relied upon the unsupported hearsay of an unidentified person, with date of conference, the extent of claimed discussions and conclusions reached unknown. In this manner, Appellant's case was adversely prejudiced without opportunity to defend against C. Barris's unsupported assertions, was denied cross-examination of Probation as to its misrepresentation of the facts, and denied opportunity to present his proofs before a court of law. Appellant was thus denied due process and the Court erred and abused its judicial discretion.

Further, the office of the Attorney General, i.e., Ms. Barris, DAG, should not make material misrepresentations so as to mislead the Court, which is of course, a violation of the Code of Professional Conduct for attorneys. The Court erred in favoring the

[2] At an "administrative review" in Oct., 2012, Essex County Probation improperly refused to consider Defendant's evidence of full payment of all support due commencing Oct. 1, 1998, including bank statements and copies of cancelled checks. Mr. Adiele of Probation stated "*We won't do that*" and refused to honor Judge Meanza's Orders of 6/20/2012 and 7/202012 to hold a hearing, on the record, for purposes of establishing a correct audit of Defendant's probation account. The "administrative review" was a sham in that it was simply a reiteration of Probation's account errors without any consideration whatsoever of any of evidence of payment or of Probation error.

unsupported un-supported hearsay representation of an agency of the State over that of Appellant's strenuous objection without due investigation and in this manner Appellant was denied his right to equal protection to fair and impartial adjudication.

3. Third, the Court made a material error of omission in its Factual Background of the Order of 3/30/2023 when it stated (DA24, p. 5, lines 13-16):

> "*In turn, the court entered orders on June 28, 2012 and July 20, 2012 directing Probation to conduct an audit of the Defendant's account, which was specified to span "for the period commencing Oct. 1, 1998 to the present date" in the Order dated July 20, 2012*"

That is, the Court erred in failing to acknowledge a material requirement of the Order of July 20, 2012, item no. 2:

> "*2. The audit shall be conducted by way of a hearing that shall be held on the record and upon noticed to the Plaintiff so that both parties can appear in person and/or obtain a copy of the record as necessary.*"

Thus, the Court overlooked or failed to consider the import of the trial Court's material requirement for a hearing to be held, on the record, be held. The Court failed to acknowledge Probation refused to comply, and upon Appellant's motion for enforcement of the Order, Judge P. Maenza improperly declined to enforce his own Orders of 6/28/2012 and 7/20/2012, unfathomably stating he didn't know if he had the authority to order Essex County Probation[3].

[3] Inexplicably although Judge Maenza verbally acknowledged Probation's erroneous account record during court proceedings by stating "*They* (Probation) *dropped the ball.*" and "*... because I'm confident that it's more like the system failed you, which I've stated from day one, than anything I've done personally to malign or criticize you, ...,*" and referring to Probation's improper levy of my income, "T*hey have no*

Additionally, when the Court stated in its Statement of Reasons of 3/30/2022 (DA29, p. 10, lines 6-9) "*In other words, the court found the submitted accounting to properly comply with the Order dated July 20, 2012, as a "full accounting" once it included all the Defendant's payments records from the period commencing on October 1, 1998*" the Court erred by omitting the Order's critical requirement to hold a "*hearing ... on the record*".

4. The Court failed to acknowledge that Defendant's payment record were **NOT** included but ignored (See John Hartmann letter of 10/8/1999, DA414) for 25 years now. Further, provision of an "accounting," whether partial or full, cannot substitute for a hearing before the court (see **Tancredi v. Tancredi**, **Harrington v. Harrington**). No hearing has ever held in this case wherein Probation was subject to cross-examination or had to justify its account record and audits before the Court, and Appellant has been denied his day in court to present proofs before the Court supporting his claims of Probation account error. Thus, the Court erred and abused its judicial discretion in overlooking or failing to consider the material import of the Order's requirement for a hearing to be held on the record, and in failing to enforce the Order of 7/20/2012 to hold a hearing on the record.

5. Fourth, the Court erred in finding:

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intention of providing due process." However, despite his dicta curing court proceedings, Judge Maenza declined to enforce his own Order for Probation to hold a hearing on the record.

> "*... the court found the submitted accounting to properly comply with the Order dated July 20, 2012, as a "full accounting" once it included all the Defendant's payments from the period commenting commencing on October 1, 1998*" (DA29)

because the payments for the period 10/1/1998 to 2/9/1999 amounting to an additional un-recognized $54,500 for the period Oct. 1, 1998 to Feb. 5, 1999 were **not** included nor referenced anywhere in the so-called "full accounting" submitted by C. Barris, DAG (see John Hartmann, Esq. letter of 10/8/1999 (supra.) and letter to Court dated 10/24//2022 (DA469) demonstrating over-payments made for the period 10/1/1998 through Oct., 1999). The Court's statement is an impermissible extrapolation and modification of the Order of 7/20/2012 (DA53) by a sister court beyond that explicitly stated in plain English or intended by the Order. The trial Court is not permitted to modify the Orders of a sister court. In this manner, the Court erred and abused its judicial discretion.

6. By way of further example, Appellant calls the Court's attention to paragraph 8 of my certification of Motion for Correction of Probation Account Record (DA346). Probation, Ms. Barris, DAG, and the Court overlooked or failed to consider and failed to respond to my citation of the requirement of the Order of 3/25/2004 (DA41, p. 1, item no. 1) requiring elimination of $16,529.20 in support arrears, which has never been posted on the account record to this very date and which is not included in the Probation "accounting" of 3/17/2022 (DA41):

> "*1. Defendant's probation account #CS82577845A shall be corrected to eliminate the $16,519.20 arrears as of March 17, 2004, and to reflect a credit of $10,354.73 as of March 17, 2004. ... His credit shall be applied to bring all additional arrears current and then at a rate of $500.*"

Nor has Probation posted the ordered schedule of reduced support payments on the account record of $500/week. Probation is not authorized to partially enforce court orders at its sole discretion. The Court erred in failing to address this account error.

7. Fifth, The Court in its order of 5/12/2023 (DA15, p. 2, line 15-17)) found:

> "*This court finds that Defendant has failed to provide the court with sufficient basis for this request. It is the party's burden, not the court's burden, to provide the specific information contained in their proofs to support their argument.*"

While limitations on page length of appeal briefs prevent Appellant from presenting a detailed exposition as to each and every piece of evidence supporting claims of account error, allow Appellant to note that between Appellant's Motion for Enforcement of the Order of 1/11/2022, his Motion for Reconsideration of the Order of 4/4/2022, his Motion for Correction of the Probation Account Record, and his Motion for Reconsideration of the Order of 3/30/2023, Appellant has submitted 135 appendices of documents of supporting court Orders, erroneous audits and erroneous Probation statements, and even identified specific pages in Probation's account record as to errors and deficiencies.

Further, in his Motion for Reconsideration of the Order of 3/30/2023 Appellant cited specific evidence in his certification (DA372) which the court overlooked, failed to

consider or by mistake failed to address in paragraphs nos. 2, 7, 11, 12, 15, 16 and 19 of his brief, and in paragraphs 1, 7, 11, and 17 of his Reply (DA388). In addition, the Court failed to consider and address the following partial sample of citations of account errors: which was overlooked or not considered by the Court and Probation failed to rebut with particularity:

- Appellant's certification of 10/27/2022 (DA373, paragraph no. 2) and his Reply (DA388, paragraph 2) cite **newly submitted account errors not previously litigated**, namely paragraphs 1, 2, 3,4, 5, 7, 11, 12, 13, 15, 16, 17, 19 and 20, and paragraph no. 4 of my Reply – not subject to claims of "collateral estoppel."
- Paragraphs 1 – 5, (DA340-DA342) identify numerous specific inconsistencies and contradictions between Probation records and Ms. Barris's analysis (citing specific pages from the Probation records).
- Paragraph no. 8 cites missing payments made for the period 10/1/1998 – 2/5/1999. Nowhere in Ms. Barris's analysis are any of the payments made by me prior to 2/19/1999 identified (see DA164, DA196, DA198, DA255, DA264).
- Paragraph no. 10 cites ordered reduced support payments not posted on the account record pursuant to the Remand Order of 1/17/2002.

- A hearing was requested in paragraph 22 – but the Court overlooked [4]
- Paragraph No. 12 cites the forensic accounting analysis of CPA Steven Chait which identified $56,191 in account record errors for the period Oct. 1, 1998 to 2/6/2019 – ignored by Probation and overlooked by the Court.

8. Again, Probation's "accounting" does not comply with the Order of 1/11/2022 which states (DA76), paragraph no 3):

> "The Defendant shall receive a credit for **any overpayments or improper garnishments** discovered from the full accounting of child support and alimony arrears and records **previously paid by Defendant**" (emphasis added)

Clearly, the full extent of Defendant's support obligations have not been matched against the full extent of payments made from 10/1/1998 to 1/11/2022, including payments made directly to Respondent and recognized by the FJOD, item 19 (supra). as I argued in my Reply pursuant to my Motion for Reconsideration of the Order of 5/12/2023, paragraph 6.

9. Thus, it is apparent that Probation failed to maintain an accurate account record , enforced court Orders in an arbitrary and capricious manner under color of law starting "day one" – Oct. 1, 1998. It is my position that the trial court's lack of

[4] The Court cited in its OTSC Order of 1/24/2023 opportunity for Appellant to pursue request for a hearing (see p. no. 6). However the Court remains silent on scheduling a hearing in its Orders of 3/30/2023 and 5/12/2023 though it noted the opportunity previously. The litigant should not be required to request a hearing; the Court has the obligation to schedule a hearing to resolve disputed facts of the case, and should have done so *sua ponte*. **Tancredi v. Tancredi, Harrington v. Harrington**.

oversight of Probation's account record permitted Probation to continue its wrongdoing without accountability for 25 years now. The court failed to investigate disputed facts of the case, failed to hold a hearing, failed to hold a hearing where Appellant could challenge Probation via cross-examination in court and present his proofs of account error, and the Court essentially abrogated its responsibility as finder of fact, permitting Probation's pattern of continued wrongdoing over decades and in this manner, erred and abused its judicial discretion.

POINT II: The Court erred and abused its judicial discretion not only in overlooking or by mistake or by misapplication of law failing to comprehensively review Probation's alleged "accounting" and the missing and overlooked credits duly issued by court Orders, but given the evidence of Probation's withdrawal of decades of erroneous account postings and audits, the Court erred and abused its judicial discretion and its obligation to ensure the accurate enforcement of its Orders in a manner so as to manifestly offend the interests of justice and equity. Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. Given Probation's continued pattern of 23 years of mismanagement of the account record, wrongful misconduct, and the adverse impact of Probation's errors on subsequent judicial consideration of motions submitted before the court and the court Orders issued, the extent of Probation's account errors needs be reviewed comprehensively by the Court.

2. It is clear that no court attending to this case has been inclined to diligently "do the analysis" necessary to correct Probation's account errors. There have been some 8 or 9 judges attending to support issues in this case, and each new judge in

turn has "rubber stamped" the ruling of the previous judge, failing to diligently verify whether previous courts have conducted adequate investigation to resolve disputed facts of the case, and issued findings of fact regarding those specific disputes. No findings of fact with respect to specific errors cited by Appellant have been issued by the Court. Again, "no one did the analysis." It is further apparent that judges have repeatedly overlooked Probation's failure to accurately enforce their Orders, failed to challenge Probation as to blatantly evident errors in its account record, preferring to accept Probation's erroneous account record and "accounting" of 3/17/2022 *verbatim* and pedantically deny Appellant's motions for relief so Appellant would just "go away." Probation has never been required to defend and justify its account record, or its "accounting" of 3/17/2022 at a hearing before the Court. In this manner, Probation has been improperly allowed to remain unaccountable and free of responsibility for its account errors for 25 years.

3. Appellant has presented prima facie cases with extensive supporting evidence identifying material account errors and been denied opportunity every time to rebut and defend against Probation's erroneous account record, to face his accuser, Probation, in a court of law, to present his proofs before the court, to cross-examine Probation as to its account errors, and to obtain fair and impartial adjudication and finding of fact as to the disputed facts of the case.

4. With respect to the Order of 3/30/2023 (Appellant's Motion for Correction of Probation Account Record), and the Order of 5/12/2023 (Motion for Reconsideration of the Order of 3/30/2023), Judge Jones has adopted Probation's "accounting" of 3/17/2022 (DA28) without permitting Appellant to rebut and defend against Probation's "accounting," account record, audits and misrepresentations without permitting oral argument (requested several times) and without opportunity to present his proofs in court in order to resolve disputed facts of the case. In essence, Judge Jones abdicated her responsibility as the finder of fact. Judge Jones failed to make any specific findings of fact with reference to Appellant's prima facie demonstration of multiple errors in Probation's "accounting" of 3/17/2022 (DA162) and its account record. In this manner, Appellant was denied fair and impartial adjudication and thereby denied due process, and the Court erred and abused its judicial discretion in this manner.

5. Probation's withdrawal of its fabricated $16,000 support arrearage charge after 23 years, but its refusal to post the full extent of payments made by Appellant as accepted by the original trial Court (Judge Herr) in compliance with the Remand Order of 1/17/2002 does not fully correct Probation's error on this issue. Nor does acknowledgment of a $10,454.73 credit by way of the Order of 3/25/2004, but failure to post the remaining awards granted by that Order amounting to $57,973.20 ($16,519.20 in eliminated arrearage charges + $36,711 in reduced support charges

+$4,753 in credit for overpayment starting Oct. 1, 1998 = $57,973.20) does not fully resolve the full extent of Probation's error on this issue. Nor does the Court's failure to consider S. Chait's forensic Certification of Probation Account Error (DA266) promote justice or equity in this case. Again, the Court failed in its continued obligation to resolve disputed facts of the case and determine findings of fact.

6. A comprehensive view starting with Oct. 1, 1999 will demonstrate Probation's systematic, arbitrary and capricious enforcement of court Orders, corruption of the support account record, and denial of due process to Appellant.

7. Although the Court finds Probation's accounting complete (DA83) and cited the credit stipulated by the "accounting" of $17,121.94 (DA84), the credit is inadequate because the Court unfathomably failed to 1) acknowledge evidence of $54,500 in Appellant's payments made directly to Respondent before probation was ordered to process support payments (DA471), failed to acknowledge the original trial court's finding of overpayment (DA38), and the current Court failed to consider the inconsistency of Probation acknowledging part of the awards granted by court Order of 3/25/2004 (DA41), but not the full extent of awards – again, without consideration, investigation or consideration by the trial Court. Again, no hearing was held to resolve disputed facts where Appellant could submit his proofs and challenge Probation in a court of law. Appellant was denied due process.

8. Given Probation's recent withdrawal of its fabricated $16,000 in support arrearage charges after 23 years and its acknowledgment of $10,354 in credits erroneously denied Appellant for 18 years, it is clear that probation's account record cannot be trusted, and **Appellant's claims of material account record error for the past 25 years have been vindicated.** As presented elsewhere herein, further material account errors are identified and need be adjudicated by way of hearing.

9. Appellant therefore requests a remand Order from the Appellate Court for a hearing to present proofs of account errors, cross-examine and require probation to justify its support account record, resolve Probation account errors by way of fair and impartial adjudication of the issues.

POINT III: The Court erred and abused its judicial discretion by 1) failing to consider Defendant's prima facie evidence that the Probation account contained voluminous errors, and 2) by failing to consider valid court Orders demonstrating Probation's account errors, 3) by failing to schedule a hearing to resolve disputed facts of the case and instead continuing to rely upon Probation's erroneous "accounting" and audits, and 4) by denying Defendant the resulting credits and income rightfully due him, and in this manner the Court denied Defendant due process by failing to provide Defendant with opportunity to present proofs to support his claim of Probation account error – in a hearing on the record as ordered by Judge Meanza and as rightfully due Defendant as a matter of justice and equity. Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. Appellant has repeatedly submitted prima facie evidence of material Probation account error in multiple motions before the court with extensive evidence of account error, including court orders which Probation failed to properly enforce:

the Orders of 10/20/1998, 2/5/1999, the FJOD, the Appellate Remand Orders of 1/17/2002 and 10/27/2005, the trial court's orders of 3/25/2004, 10/22/2009, 2/2/2012, 2/6/2012, 6/28/2012, 7/20/2012, 10/11/2013, 12/10/2014, 10/27/2015, 1/10/2020, 10/25/2021, 1/11/2022 and 4/4/2022. Although Ms. Dominguez of Essex County Probation advised Appellant in a telephone call in the fall of 2021 that all "75 Orders in this case were being reviewed" in the "Trenton office it is blatantly evident that Probation lost track of the numerous court Orders in this case, and failed to properly review all pertinent court Orders for impact upon the account record.

2. Further, Appellant calls the Appellate Court's attention to the letter dated 4/2/2004 issued by John Hartmann, Esq., to Probation (DA471) which provides notice to Probation that the Order of 3/25/2004 requires a $10,354.73 credit, the elimination of $16,519.20in posted support arrears, and the reduced payment schedule of support of $36,711– which to this day have not been fully posted on the account record. Thus, Probation has shown itself to be incapable of posting court ordered awards even when Appellant's attorney specifically advised Probation in writing of each court-ordered credit due Defendant.

3. As Appellant noted in paragraph 14 of his Reply to his Motion for Reconsideration of the Order of 5/12/2023, where disputed facts are presented by way of contradictory certifications, affidavits, and the like, the court has the obligation and the duty to further investigate, citing **Tancredi v. Tancredit, 101**

N.J. Super 259, 262 (App. Div. 1968) and **Harrington v. Harrington 281 N.J. Super 39, 47 (App. Div. 1965)** regarding disputes regarding probation account errors, i.e.:

> "*Only by such procedures can a court make certain that it has fully explored the issue and has correctly adjudged it. Cross-examination is the most effective device known to our trial procedure for seeking the truth.*" And,
>
> "*...We have repeatedly emphasized that trial judges cannot resolve material factual disputes upon conflicting affidavits and certifications.*", and
>
> "*...Accordingly, we remand for a plenary hearing as to that issue.*" **(Harrington v. Harrington)**.

Appellant respectfully submits that the Court overlooked or failed to consider Appellant's probative evidence of error in Probation's "full accounting" of 3/17/2022, failed to pursue diligent investigation of material disputed facts, failed to hold a hearing and make findings of fact, and ultimately failed to meet its obligation ensure an accurate account record. – essentially abrogating their responsibility to be finder of fact and verify accurate enforcement of its Orders. That is, not one of the judges attending support issued in this case made an effort to "***do the analysis***", and no hearing was held wherein Appellant could rebut and defend against unjustified account record postings. As ruled in **Harrington v. Harrington**, the trial Court should have scheduled a hearing *sua ponte* but failed to do so. Appellant did not

waived his right to defend and rebut against Probation's erroneous account record and audits. To the contrary, Appellant has been fighting these errors for 25 years, submitted nearly 100 letters to various agencies of the State, and numerous motions have been filed seeking relief from continued account errors. The Court has a continuing responsibility to ensure accurate enforcement of its Orders, which has not been met, and Appellant has been denied due process in this manner.

4. By way of example, although Probation's "accounting" of 3/17/2022 (DA162) failed to include payments made by Appellant for the period 10/1/1998 through to 2/5/1999, and Ms. Barris acknowledged Probation did not have records supporting those payments and withdrew its claim of $16,000 in support arrearage as of 2/1999, Probation claimed compliance with the Order of 1/11/2022 (DA76).

5. However, the Order of 1/11/2022 (DA76) requires an accounting commencing Oct. 1, 1998 (item no. 2), and required the following in paragraph 3:

> "The Defendant shall receive a credit for **any overpayments or improper garnishments** discovered from the full accounting of child support and alimony arrears and records **previously paid by Defendant**.(emphasis added)

The trial court in its Order of 4/4/2022 determined (DA83):

> "Here, the court finds that Probation has submitted a full accounting has been provided, after obtaining the microfiche records prior to October 1, 2000, to the Defendant. While the Defendant asserts that Probation violated the Order

dated January 11, 2022, by failing to produce the full accounting by Feb. 11, 2022, the Court, through its discretion, does not find Probation violated the Order dated Jan. 11, 2022. Rather, the Court finds that, on Feb. 11, 2022, Probation submitted all available accounting of the Defendant's probation account and indicated to the Court that Probation had to confer with Defendant regarding payments before October 1, 2000."

There are a number of issues which invalidate the Court's findings.

- First, the microfiche records contained no records for the period 10/1/1998 to 2/1999 because payments were required to be made through Probation by the Order of 2/5/1999 (DA30), and that is why Probation has no records for that period. However, payments were made as evidenced by John Hartmann's letter to the Court of 10/8/1999 (DA414) and the FJOD, item 19 (DA38) and the Order of 3/25/2002 providing a credit of $4,753 ($4,800 – tax liability of $47 = $4,753, see DA45) be provided to Defendant. Further, in Appellant's letter to the Court dated 6/2/2022, payments in the amount of $54,500 were identified as not being acknowledged by Probation for that period. The Court should have *sua ponte* scheduled a hearing to adjudicate Appellant's claims and evidence of court-ordered overpayment for the period in question. **(Tancredi v. Tancredi,** and **Harrington v. Harrington).** The Court erred and abused its judicial discretion in overlooking or failing to consider 1) the

evidence of over-payments submitted by Appellant and 2) the court Orders supporting overpayment, and in failing to meet its obligation to hold a hearing to resolve the material disputed facts of the case.

- It is further clear that the full extent of Defendant's obligations and payments from 10/1/1998 to 1/11/2022 have not been matched against each other in Probation's "accounting." That is, Probation has mismatched the payments period versus the period for amounts charged and due, and ignored evidence of further direct payments of support of $54,500 (see Reply, re Motion for Reconsideration of the Order of 5/12/2023, paragraph 6). The Court overlooked this basic accounting principle and in this manner erred.
- The Court relied unfairly on Probation's "accounting" without permitting Appellant to defend and rebut against the errors in the so-called "accounting" with proofs and cross-examination of Probation before the Court.

6. After 23 years of improperly "stonewalling" Appellant's claims of account error, submission of an incomplete "accounting", and material misrepresentation to the Court of the facts of the case, It is clear that Probation's representations to the Court, its account records, and its "accounting" of 3/17/2022 cannot be trusted, and Probation is incapable of self-correcting its account record. Appellant therefore requests that the Appellate Court issue a remand Order requiring a hearing be held

before the trial Court to adjudicate disputed facts of the case, specifically the erroneous Probation account record.

POINT IV: The Court erred and abused its judicial discretion in misapplying "law of the case" doctrine in a manner contrary to the Appellate court's Remand orders of 1/17/2022 and 10/27/2005 and the trial Court's Orders of 12/10/2014 and 1/10/2020 in a manner beyond the authority and intent of the trial court and in a manner contrary to the submitted evidence. Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. The Superior Court has denied Appellant's applications for relief from Probation account errors by implicitly, or in some cases, explicitly adopting a "Law of the Case" determination in a manner of repeated misapplication, including Appellant's Motions for Reconsideration of the Order of 3/30/2023 and 5/12/2023.

2. First, from "day one" of this case, Oct. 1, 1998, no court took the time to diligently analyze Appellant's evidence of Probation account error. As noted by my former attorney, Ms. Laurie Newmark, during the "tortured history" of this case "**no one did the *analysis***" (2T11, 8-10). That is, not one justice spent the time to diligently review evidence of account error, compare relevant court orders to support charges due, Appellant's payments made, and corresponding credits due him to Probation's account record and audits, note the disparities and make an effort to resolve disputed facts of the case by way of a hearing, investigation, and cross-examination of the parties. The trial courts overlooked Appellant's meritorious claims of account error, failed to enforce duly issued Orders of sister courts or even

their own Orders, or relied upon the unsupported assumption that previous justices must have properly reviewed the evidence in denying Appellant's motions for correction of account error but failed to diligently verify same. Not one justice issued findings of fact specific to Appellant's detailed claims and evidence of error. Blatant account errors have been repeatedly overlooked or mistakenly not considered. "Law of the Case" doctrine, and "collateral estoppel" (as claimed in defense by Probation and Ms. Barris, DAG) have been applied in knee-jerk fashion without diligent confirmation of previous judge's efforts before denying Appellant's request for relief. A review of the Orders of 4/4/20222, 3/30/2022 and 5/12/2022 indicate not one court responded with specificity to Appellant's evidence of account error but instead utilized a generic misapplication of Law of the Case whether applicable or not. Indeed, "Law of the Case" doctrine and "collateral estoppel" defense have even been improperly applied to newly submitted claims of account error never previous litigated in Appellant's Motion for Correction of Probation Errors (see Point I, paragraph7, p. 19, and Point VI, paragraph 1, p.42 for further discussion)). Probation, Ms. Barris, DAG, and the Court erred in misapplication of Law of the Case doctrine and "collateral estoppel" in this manner.

3. Further, given Probation's withdrawal of its support arrearage charge of $16,000 and acknowledgment of $10,354.73 in credits due Appellant after decades of "stonewalling" against correction, how can the doctrine of "Law of the Case" or

"collateral estoppel" be applicable to the State's unlawful conduct in fabricating and maintaining an admittedly inaccurate account record? By definition, Probation violated the law and cannot claim "law of the case" or "collateral estoppel" given its misconduct, but especially when perpetrated by a government agency of the State of New Jersey Agency, namely Probation. A litigant should not be held responsible for ill-applied Law of the Case or "collateral estoppel" doctrine in the face of Probation's decades-long failure to comply with the law and court orders. Further, the claim of collateral estoppel improperly ignores the fact that Probation did indeed violate court orders and collateral estoppel cannot be applied to situations generated by failure to comply with court orders or the law even a court later mistakenly accepts the condition due to oversight. Thus, Appellant has to question, how can Law of the Case doctrine or "collateral estoppel" be applied to Probation's blatant violation of the court's Orders (see discussion above, Point III, paragraph 3, for a list of court Orders inadequately enforced)? These Orders are in fact the Law of the Case and their enforcement has been improperly ignored. In this manner, the Court erred by misapplying the doctrine of Law of the Case and "collateral estoppel."

4. Appellant therefore submits that the trial Court erred and abused its judicial discretion with perfunctory, unsupported use of the Law of the Case (or collateral estoppel) doctrine in lieu of meeting its obligation to diligently investigate resolve disputed facts of the case.

5. Further, the Appellate Court stated in its Order of 6/15/2018 that appellant had been provided the opportunity for adjudication of its claims of errors by the trial court. However, it needs be pointed out that in October, 2015 Appellant had to choose between filing a motion before the same judge who readily acknowledged his inability and unwillingness to properly adjudicate my claims of account error (see Point V, paragraph 3), or pursue an appeal. Appellant therefore chose to pursue an appeal. His appeal was denied on procedural grounds, and denial of Appellant's claims of Probation account error were found to lack merit[5] – a decision which now has been shown to be unfortunate given Probation's implicit acknowledgment of material account errors which support Appellant's claims of account error which were denied by that Court! Thus, it is evident that Law of the Case and "collateral estoppel" doctrine have been misapplied, and the Court's generic reliance upon those doctrines in denying Appellant's motions for relief must be revisited as the rationale for denial has been shown to be inapplicable and no longer controlling.

6. Additionally, as explained herein under Point V, paragraph 6, Probation proceeded to improperly re-institute support awards of the FJOD on the account record which had been deemed excessive by the Appellate Remand Order of

[5] P. 11, of Appellate Order of 6/5/2018(DA141): "Finally, we have reviewed the balance of defendant's arguments, including: ... probation's calculation of arrears... The trial judge found these arguments lacked merit, and based on our review of the record we also find they lack sufficient merit to warrant further discussion in a written opinion."

1/17/2002 and corrected in response by the trial court's Order of 3/25/2004 without benefit of any court Order reinstituting the support awards of the FJOD. The trial court erred and abused its judicial discretion in overlooking Probation's failure to comply with the Law of the Case as controlled by the Appellate Remand Order of 1/17/2002. Additionally, the Appellate Order of 6/15/2023[6] must now also be reconsidered given Probation's withdrawal of fabricated arrearage charges and acknowledgment of material credits due Defendant. Clearly, Appellant's claims of account error **did have merit.** Conflicts between the Appellate Remand Orders of 1/17/2002 and 10/25/2005 and the Appellate Orders of 6/5/2018 and 6/15/2023 and Probation's lack of proper enforcement of court Orders need be resolved. Clearly, Law of the Case and "collateral estoppel" doctrine has been made inapplicable by further compounded Probation and Court error upon error over 23 years because "**no one did the analysis**."

7. Not one justice in the long history of this case ever supported their denial of Appellant's request from relief of account error with substantive explanation in their Statement of Reasons as to why Probation's generic, unsupported claims of "collateral estoppel" took priority over Appellant's palpable, probative evidence which blatantly exposed account error and lack of diligent oversight of the account

[6] P. 20, DA161: We do not address defendant's remaining arguments as they lack sufficient merit to warrant discussion in a written opinion."

record such as to offend the court's basic obligation toward justice and equity. Had a hearing been held to resolve disputed "facts," the issue could have been resolved years ago. Thus, in this manner Appellant's arguments have been prejudiced by judicial abdication of its obligation to resolve disputed facts of the case and act as finder of fact. In this manner, Appellant's right to due process has been denied.

8. It is evident that Probation's account record cannot be relied upon as accurate, and additional discrepancies with court orders and the account record have been identified. Appellant has been denied his right to defend and rebut against Probation account record errors. Appellant respectfully requests a Remand Order for a hearing to present proofs of account error before a court of law.

POINT V: The Court erred and abused its judicial discretion in failing to provide Defendant with due process and protection against unreasonable seizure of Defendant's private property as provided under the NJ Constitution, Article 1, in a manner contrary to the law and the interests of justice and equity. Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. Please recall that the Appellate Court stated in its decision of 6/5/2018, appeal docket no. A-1494-15 (DA141):

> "*Finally, we have reviewed the balance of defendant's arguments, including: ...probation's calculation of arrears; ...The trial judge found these arguments lacked merit, and based on our review of the record we also find they lack sufficient merit to warrant further discussion in a written opinion.*"

2. Given Probation's withdrawal of $16,000 in unjustifiable support arrearage charges posted as due as of 2/1999 (DA304) and Probation's acknowledgment it did not have documentation supporting its $16,000 in claimed support arrearage in the first place, it is obvious that the $16,000 arrearage charge was improperly fabricated under color of law. Neither Probation nor the Court has acknowledged same.

3. Although the Appellate Court held that "*The trial judge found these arguments lacked merit, and based on our review of the record we also find they lack sufficient merit to warrant further discussion in a written opinion.*", Appellant notes that the Judge Bogaard acknowledged at the hearing held in October, (transcript 1T47, 11-15), and as noted Appellant's brief, Appeal No. A-00261-22, p.47, lines 11-15):

> "*...I just don't have the resources or really the capabilities to go back to 1999 and redress what you feel are wrongs when other judges have looked at this and said, well, I don't really think there is a problem...*"

That is, contrary to the Appellate Court's finding, the trial court acknowledged it did not diligently review the evidence of account error and resorted to an unsupported assumption that other sister courts had done so. Sound discretion presumes diligent verification of sister's court's review of the disputed issues, and sound discretion does not appear to have been conducted here.

4. Appellant submits that the Appellate Court's reliance upon Judge Bogaard's judicial discretion in denying Appellant's appeal (DA139-140) is inconsistent with

the trial court's self-admitted lack of diligent investigation of account discrepancies and disputed facts of the case. The very rationale of the Appellate Court's decision of 6/5/2018 must be questioned, the finding needs be reconsidered as to the merit of Appellant's argument of Probation account errors given Probation's acknowledgment of material account error. Appellant further submits that the Appellate Decision of 6/5/2018 cannot be deemed controlling as the underlying rationale has now been shown to be incorrect. **Pelow v. Pelow 300 NJ Super 634, 646-647, 693, (CH. Div. 1996)**. That is, Appellant submits that a litigant cannot be held to a court decision now demonstrated to have been shown as erroneous based upon a fraudulent account record prepared under color of law by an agency of the State of New Jersey, and where litigant's arguments of 23 years has been finally shown to be correct. In this manner, Appellant's right to due process has been denied.

5. Furthermore, following the Appellate decision of 6/5/2018 (DA131), Probation unfathomably and inexplicably resorted to posting support charges due on its audits as per the support awards of the FJOD, i.e., $2,458 per week for the period 7/16/1999 through 9/30/2000 (see audits, DA281, DA290, DA294, DA299, and DA304) without benefit of any court order returning the support award to the level originally awarded in the FJOD. Please recall that the Appellate Remand Order of 1/17/2002 found the trial court's support award excessive (DA113, line 25 to

DA114, lines 1-7), and remanded the issue to the trial court for recalculation of the support award (DA130) and the trial court complied with the Order of 3/25/2004 with a schedule of reduced support payments. The Appellate Order of 6/5/2018 did not vacate the Remand Order of 1/17/2002. No court order vacated the Order of 3/25/20004 for the period up to 9/30/2000[7]. No court order was issued requiring the support award to return to the original support award of the FJOD. Thus, Probation arbitrarily and capriciously re-posted the support awards of the FJOD in its sole discretion without supporting court order - in violation of the Appellate Remand Order of 1/17/2002. Neither Probation nor the trial Court is permitted to arbitrarily and capriciously disregard an Appellate Court's Order (**Pelow v. Pelow**) nor enforce an alternative support award in an arbitrary and capricious manner in its own unauthorized discretion.. In this manner, Probation exceeded its authority under color of law and the trial court erred and abused its judicial discretion in failing to address Probation's arbitrary and capricious enforcement of court orders.

6. Further, Probation cannot recognize the credit of $10,354.73 awarded by the Order of 3/25/2004 but ignore the other awards of the Order of 3/25/2004 in an arbitrary manner. Thus, the "accounting" of 3/17/2022 is incomplete in that it does not post recognize the full extent of other awards of the Order of 3/25/2004: 1)

[7] The trial court in 2012 took the position that the Appellate Remand Order of 10/25/2005 required modification of the support award commencing on 10/1/2000.

elimination of arrears of $16,519.20, 2)reduced schedule of payments by $500/week, 3) reduced support payments in the amount of $36,711 for the period through 7/16/1999 through 9/30/2000[8]. Again, the trial Court erred and abused its judicial discretion in failing to consider Probation's continued wrongful non-compliance with the full extent of the Order of 3/25/2004 and its unauthorized re-institution of the original support award of the FJOD. Due process was denied Appellant.

7. Additionally, as Appellant noted in paragraph 11 of his Reply pursuant to the Motion for Reconsideration of the Order of 3/30/2023, although DAG Barris claims in her letter response of April 20, 2023 (p. 2, lines 1-3):

> "...at no time since initiating motion practice in early 2022 has Defendant Gromek demonstrated that he paid into Probation more than he was obligated to pay"

DAG Barris's assertion is simply absurd. As demonstrated above, Appellant has been denied benefit of numerous court orders, denied thousands of dollars in court awarded credits, reduced support payments and eliminated arrearages, submitted *prima facie* evidence of same, but has been improperly denied oral argument and denied opportunity to present his proofs and to require Probation to justify its account record before the Court by way of a hearing. Garnishment of his SSA

[8] As cited on p. 8 (DA348) of Appellant's certification, Motion for Correction of Probation Account Record filed 10/27/2002, $20,007 for the period 7/16/1999 to 12/31/199, $16,704 for the period 1/1/2000 to 9/30/2000 as required by the Order of 3/25/2004. Also see Appellant's Motion filed 7/27/2020 citing prima facie evidence of Probation account error supporting request for a plenary hearing to correct the account record.

benefits in violation of the Orders of 10/25/2021 and 4/4/2022, and garnishment of Appellant's income further confirms the absurdity of Ms. Barris's assertion. The trial Court erred and abused its judicial discretion in failing to meet its obligation as finder of fact to adjudicate these issues in any manner whatsoever. In this manner, the Court denied Appellant due process and his "day in court."

8. The Constitution of the State of New Jersey, Article 1, paragraph one cites the unalienable rights of all persons to "acquiring, possessing and protecting property." Paragraph 7 goes on to state "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated;" Clearly, Probation's decades-long over-garnishment of Appellant's income and its failure to maintain an accurate account record constitute an unreasonable taking of Appellant's property and denial of due process under color of law. Probation has thus denied Appellant his right to protection against unreasonable seizure of private property as protected by the New Jersey Constitution, Article 1, sections 1, 7, and the US Constitution, Amendment No. 4.

9. Further, the garnishment of my social security benefits under a false NJ child support account number not belonging to me, the denial of my motion for discovery, the oversight or failure to consider Probation's violation of the Orders of 10/25/2021 and 4/4/2022 by the trial Court constitute a denial of due process and unreasonable seizure of my personal property which needs be considered by the Appellate Court.

10. The Court's reluctance to challenge Probation as to its account record has, in essence, served to acquiesce to Probation's continued inability to maintain an accurate account record and permitted Probation to remain unaccountable for its errors for decades. Appellant has been denied many thousands of dollars in income, and has had to absorb hundreds of thousands of dollars in loans to accommodate Probation's errors. Appellant's rights to the protections afforded by the NJ Constitution and the child support guidelines have been denied him, and in this manner, the trial court has erred and abused its judicial discretion.

POINT VI: The Court erred and abused its judicial discretion by overlooking, or by mistake, failing to consider Defendant's probative, substantive evidence of probation account error not previously litigated and in turn relying upon the unsupported, non-substantive, non-responsive arguments of Probation in a manner so as to manifestly offend the interests of justice and equity. Re: Order of 5/12/2023 (DA14), Order of 3/30/2023(DA20)

1. Both Probation and the Court apparently missed the entire point of Appellant's Motion for Correction of Probation Account Record, which was to submit further evidence of Probation account error not previously litigated. As Appellant noted on page 2 of his Certification:

> "*As the Court has not yet issued a decision with respect to my pending Motion for Reconsideration, and as noted in my Certification (paragraph 25) and in my Reply (paragraph 13), motion page limitations prevented my listing all Probation account errors, audits errors, and errors in Ms. Barris's filing of 3/17/2022, and as the Court denied my request for a plenary hearing by way of its Order of 4/4/2022 (**Exhibit 1**), stating "The Court notes the Defendant always*

> *has the right to file a new motion if he uncovers any discrepancies. Accordingly, the Court* ***DENIES*** *the Defendant's request for the Court to preliminarily Order a hearing if discrepancies remain"*[9]*, I respectfully submit this Motion for correction of* ***yet further palpably evident discrepancies found in Probation's account record, its audits, and its "accounting" of 3/17/2022 which have resulted in continued, egregious, unjust over-garnishment of my income and social security benefits***." (bold and underlining added).

Newly submitted probation account errors were identified in Appellant's filings (see further discussion above, Point I, paragraph 7, p. 19). However, the Court overlooked or failed to consider the essential nature of Appellant's Motion, his specific citation of newly submitted account errors, which the Court failed to address. The Court erred in this manner. Had Appellant's request for oral argument been granted, the error likely would not have occurred.

2. Further, Appellant requested consolidation of his current Motion for Correction of the Probation Account Record with his previous Motion for Reconsideration of the Order of 4/4/2022 (letter dated 10/24/2022, DA469). Appellant's Motion was filed in compliance with the terms of the Order of 4/4/2023 (DA80), i.e. that "*3. All other requests are denied without prejudice.*" Given Judge Pawar's concern for potential additional discrepancies and his reluctance to order a hearing "if discrepancies remain" Appellant submitted his Motion for Correction of Probation Account Error citing account errors by specific paragraph which had not been previously litigated in addition to those errors previously litigated as they

[9] Statement of Reasons, p. 4, 1st paragraph, line 9).

comprehensively support my claims of Probation's history of continued wrongful account records. The Court appears to have overlooked this critical point in its Orders of 3/30/2023 and 5/12/2023, and in this manner erred.

3. Further, Appellant also stated in the same letter dated 10/24/2022 that he had not yet been advised of any decision by the Court as to his Motion for Reconsideration of the Order of 4/4/2022 filed 4/22/2022. The Court apparently overlooked its own failure to promptly provide Appellant with the Court's decision of 5/27/2022 and failed to address its error for many months! In this manner, the Court's dysfunction and error continued. Appellant should not be held responsible for the Court's dysfunction.

4. In his certifications for Motion For Correction of Probation Account Record (DA339), Motion for the Reconsideration of the order of 4/4/2022 (DA357), certification for Motion for Reconsideration of the Order of 3/30/2023 (DA372) and his Reply (DA388), Appellant has cited numerous court Orders which were improperly violated by Probation, either in part or in full, in an arbitrary and capricious manner in compliance with **R 1:7-4 (b)** providing "*...a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. ...*" Appellant further cited Probation's misconduct in fabrication of false support charges, over-garnishment of Appellant's income under an erroneous child support account in violation of court orders to terminate

garnishment, and unauthorized posting of incorrect support charges absent court order to do so. However, Probation conspicuously failed to respond in like because it could not justify its violation of court Orders.

5. Although Probation and Ms. Barris (see 3/17/2022 "accounting, DA162) insisted that Appellant cite specific account errors, which he did, Ms. Barris and Probation did not (see additional discussion, Point III, paragraph 2), responding with generic, knee-jerk unsupported claims of "previously litigated" and "collateral estoppel" without responding with specificity to any of the newly submitted Probation account errors specifically identified by Appellant, nor demonstrating where such claimed previous litigation occurred. Simply put, Probation conspicuously avoided response to material and specifically identified account errors because it could not respond without acknowledging its own violations of court orders. Thus, Probation chose to respond with knee-jerk generic "collateral estoppel" argument whether applicable or not.

6. In turn, the Court failed to acknowledge Probation's arbitrary, capricious enforcement of court Orders and failed to acknowledge the inadequacy of Probation's response (see further discussion, Point III, paragraph 3) to specific claims of account error or its questionable applicability of claim of "collateral estoppel." That is, on the one hand, the Court was provided with Appellant's probative, substantive and competent evidence of specific account error and

demonstrated inadequacy of Probation's "accounting" of 3/17/2022, and on the other hand, the Court had Probation's generic, unsupported, non-specific without particularity to any of the account errors raised by Appellant. **Rule 1:6-2** requires "responsive papers ... served stating with particularity the basis of the opposition to the relief sought." Ms. Barris and Probation did not comply with the Rule and the Court failed to address the inadequacy of Probation's response. In this manner, the Court erred in its judgment and abused its judicial discretion.

7. Further, the trial Court found that Probation had complied with the Order of 1/11/2023 in providing a "full accounting" based upon documentation available to Probation: "... The Court finds that, on Feb. 11, 2022, Probation submitted all available accounting of the Defendant's probation account..." (DA83). However, the trial Court failed to acknowledge that Probation had, in fact, refused to consider Appellant's evidence of payment in full (see footnote no.2, Point I paragraph no. 2, p. 14), and the trial court improperly ignored Appellant's evidence of actual overpayment of amounts due for the period 10/1/1998 to 9/9199 (see Statement of Facts, paragraph no. 9 for further detailed discussion). Not only did the trial Court improperly ignore Probation's refusal to consider relevant evidence of overpayment of amounts due for the period, but by doing so the Court erred in its Order of 4/4/2022 by issuing an order which ignored and contradicted the Remand Order of 1/17/2002 and the subsequent Order of 3/25/2004 issued in compliance – further

compounding the errors in this case. That is, the Court accepted Probation's claim of lacking records, ignored Probation's improper fabrication of support arrearage and its denial of credits due Appellant by the Order of 3/25/2004, failed to consider probative, substantive evidence of evidence of Appellant's overpayment for the period in question, but unfathomably found Probation to have complied with the Order of 1/11/2022 even though $54,500 in direct payments to Respondent were missing from the "accounting." The Court failed to address the blatantly evident incomplete nature of Probation's accounting, failed to *sua ponte* further investigate the evident inconsistency between the "accounting" and meritorious evidence of overpayment, including two supporting court orders, and in this manner erred and abused its judicial discretion.

8. The result of Probation's arbitrary and capricious enforcement of court orders wis that Appellant's income was improperly garnished on the basis of false, charges posted on the account record without benefit of due process. I submit the court erred in failing to protect Appellant's rights to the benefits provided by numerous court orders, and by the Court's reluctance to address Probation's evident arbitrary and capricious enforcement.

9. Thus, the Court in its Order of 3/30/2023 appears to have failed to consider or by mistake failed to address Appellant's claims and probative evidence of account error against an unsupported and generic opposition offered by Probation, i.e.

"collateral estoppel" argument, without particularity No substantive rebuttal to Appellant's evidence of account record error has been provided. . The Court failed to address the inadequate response. In this manner Appellant was denied competent, probative adjudication of his requests for relief, and the Court erred and abused its judicial discretion in a manner offensive to the interests of justice and equity.

Point VII: Given the extent of the Superior Court's and Probation's failure to oversee and maintain an accurate Probation account record for the past 25 years, Defendant requests the Appellate Court assume jurisdiction of this case so that an accurate account record can be finally established and the full extent of credits rightfully due Defendant be granted.

1. Probation's 25-year history of continued wrongful mismanagement and misconduct has amply demonstrated its extraordinary inability to maintain an accurate account record, its arbitrary and capricious enforcement of court-ordered awards, its outright fabrication of false child support charges, its inability to track alimony versus child support payments, its unlawful garnishment of Social Security benefits under false child support account number, and its issuance of erroneous audits to the Court which engendered further court orders tainted with Probation error and further over-garnishment of income. It is also apparent that Probation lost track of court Orders, lost track of charges it placed on the account record and could no longer explain its erroneous postings on the account record. It is further clear that after a year of effort to correct the account record, Probation's "accounting" of

3/17/2022 is incomplete, erroneous and fatally flawed. Account errors starting "day one", i.e. Oct. 1, 1998, have yet to be corrected.

2. It is further apparent that the trial court has been reluctant for 25 years to challenge Probation to correct its account errors and to properly enforce its court Orders against Probation. It is also clear that the trial court failed to meet its continuing obligation to serve as finder of fact and to ensure an accurate account record. Probation has thus remain unaccountable for its erroneous account record for decades. As the Appellate Court advised Appellant during oral argument in October, 2005[10], "Even if litigant applies for 50 cents of relief, he is entitled to do so." However, in practice, the trial Court has failed to recognize that right. Credits rightfully due me are worth well over $100,000 (DA348), and Appellant believes he has the right to an explanation of why his income was improperly taken under color of law.

Appellant has advised the Court for 25 years of Probation's account errors and his claims have now been vindicated by Probation's acknowledgment of some but not all of its account errors. Further correction of the account record is clearly warranted. Numerous identified discrepancies remain unaddressed. It is time that Probation's account record be adjudicated comprehensively in its entirety, account errors cleared, and the full extent of credits due Appellant be awarded.

[10] Appellate Order of 10/25/2004, docket no. A4825-03 –T1.

Given Probation's demonstrated inability to correct its account record, its inability to provide a "full accounting," and given the trial court's reluctance to "do the analysis," Appellant therefore requests that the Appellate Court remand to the trial court for a hearing to correct the account record from Oct. 1, 1998 through to 5/5/2023 when Probation closed the case. Appellant therefore respectfully ask the Appellate Court, When will he be provided with the opportunity to face my accuser and present his proofs of Probation account error in a court of law? When will he have his day in court?

In the alternative, Appellant requests the appellate court to assume jurisdiction of this case so that the Probation account record can be corrected and the credits rightfully due Appellant are provided in compliance with the law and with court Orders. Appellant asks the Court for the due process to which he is entitled.

CERTIFICATION

I hereby certify that the aforesaid statements are true. I understand that if they are willfully false, I am subject to punishment.

Date: 11/6/2023 V. F. Gromek

VITOLD F. GROMEK

SHARON MILLER GROMEK,

plaintiff/respondent

vs.

VITOLD F. GROMEK

defendant/appellant pro se

SUPERIOR COURT OF NEW JERSEY,

APPELLATE DIVISION,

DOCKET NO. A-003181-22

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION – FAMILY PART

MORRIS COUNTY

DOCKET NO. FM 14 – 6 - 10

CERTIFICATION OF SERVICE

I, Vitold Gromek, Appellant and Defendant Pro Se, certifies that service of 1 copy of 1) Appeal Brief, revised has been provided this date to the following:

1. Via US Express Mail, delivery confirmation: 9505 5131 6812 3310 4538 76

   S. M. Gromek, ~~2006 Appleton Way, Whippany, NJ 07981~~ 356 River Park Dr., Raritan, N.J. 08869

   Essex County Probation in care of Ms. C. Barris, Deputy Attorney General, Office of the Attorney General, Department of Law and Public Safety, 25 Market St., Trenton, NJ, 08625

   9505 5131 6812 3310 4538 90

By: V. Gromek. Date: 11/6/2023

Vitold F. Gromek, Defendant Pro Se

KLK

Nov. 6. 2023

Vitold Gromek,
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29 Passaic Ave.
Roseland, NJ 07068

Clerk of the Appellate Court,

Superior Court of New Jersey,

Appellate Division,

Richard J Hughes Justice Complex,

P O Box 006,

Trenton, NJ 08625-0006

Re: Appeal Brief

Superior Court Docket, Morris County,
FM 14 – 6 – 10

Appellate Division Docket No. A-003181-22

Dear Clerk of the Appellate Court,

In accordance with the Brief Deficiency Notice dated 10/20/2023, please see attached the following:

1. Three copies of Revised Appeal Brief dated Nov. 6, 2023.
2. Revised Table of Contents, Table of Judgments, Orders & Rulings, Table of Authorities.
3. Certification of Service

Please note that the Notice indicated my Appendices were accepted as submitted on 10/18/2023.

Please advise if further information is required. As I am acting Pro Se, you can contact me by phone at 862 485 8818, or via US mail at: 29 Passaic Ave., Roseland, NJ 07068.

Thank you for your consideration.

Respectfully,

V. Gromek

Vitold Gromek, Defendant/Appellant Pro Se

Cc: S. Miller Gromek, Respondent
C. Barris, Esq., DAG